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EXAMINER

HEWITT II, CALVIN L

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3621

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 36

Application Number: 09/272,542
Filing Date: March 19, 1999
Appellant(s): MADOFF ET AL.

MAILED

DEC 02 2003

GROUP 3600

Denis G. Maloney, Reg. No. 29,670
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 27 October 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the

decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 33-39, claims 1, 4-6, 9, 10, 13, 24-32, 73 and 75, claim 2, claim 3, claims 7, 8, 11, 12 and 76, claims 14-23, claims 40, and 65-70, claims 55-58, claims 71, 72, 77 and 78, and claim 64 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,161,099	HARRINGTON et al.	12-2000
5,136,501	SILVERMAN et al.	8-1992

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Response to Amendment/Argument

The Applicant has not provided the Examiner with a definition for the term “order” that would have provided a reason or rationale such that one of ordinary skill would not have regarded the system of Harrington et al. as a prior art system of auctioning products. Specifically, the Examiner was looking for a definition to show that the Harrington et al. system lacked the feature of, “entering an order for a product”. However, The American Heritage Dictionary Second College Edition defines an order as a “commission or instruction to buy, sell or supply something”. Therefore, as the Harrington et al. system is dedicated to selling financial products, the auction defining process (figures 10 and 15) is an “entering an order” step, as it is financial product specific (figure 10) and serves as a commission or instruction to “sell or supply something” (i.e. financial

products) evidenced by the responses to buy the financial product (column 6, lines 10-65). This is in line with the Applicant's system as an order is entered using order type, quantity, financial product and exposure time (Specification, page 9, lines 16-18) all parameters used by an auctioneer, issuer, auction administrator...etc. when preparing a financial product for sale (figures 10 and 15; page 6, lines 10-52).

Claims 1, 14, 55, 64 and 71 recite non-functional descriptive material. In particular, each claim recites a limitation detailing an "entering a response or responses..." step as it does not effect and concludes with a matching step that requires responses to be matched to orders according to, the amended limitation of, "the conditions specified by the order". Therefore, the matching between order and response is purely a function of the conditions of the initial order and occur independent of the data specified in an entered response or responses. Hence, the "entering a response" step is merely descriptive material as it does not effect the way in which the computing processes of creating and fulfilling an order are performed (*In re Gullack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)). Similarly, claims 3, 5, 7, 11, 12, 19, 66 and 78 recite non-functional descriptive material as they elaborate upon response prices. Claim 71 also recites the non-functional descriptive material of "entering pre-defined relative indications..."

In addition, the Appellant's failure to challenge the following assertions of facts has resulted in the following to be acknowledged as admitted prior art:

- Financial markets, clearing corporations and their functions

Claims 1-40, 55-58 and 64-78 are rejected.

Claim Rejections - 35 USC § 102

Claims 33, 34, 38, 39, and 64 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Harrington et al., U.S. Patent No. 6,161,099.

As per claims 33, 34, 38, 39, and 64 Harrington et al. teach a system for auctioning products over a distributed, networked computer system comprising:

- a plurality of workstations for entering an order for a product (e.g. financial instruments whose value changes with market conditions- bonds, stocks, paper...etc.), specifying quantity of a financial product and exposure time for which the order is displayed for responses, and for entering responses (figure 1)
- a server coupled to the workstations for processing orders (figure 1; column 6, lines 37-52)
- matching the order with the response in accordance with the exposure time specified by the order (figure 6; column 8, lines 18-28; column 9, lines 11-22; column 10, lines 32-41; column 11, lines 20-42; column 12, lines 24-30)

- executing a trade between orders and responses (abstract)
- conditions which can include price improvement attached to an order (figure 15)
- entering responses with pre-defined relative indications that exist prior to an auction or submitted after an order was entered (column 10, lines 7-12 and 51-61; column 13, lines 57-61)
- all or nothing bids (column 4, lines 38-42)
- orders that specify a minimal acceptable price improvement (figure 15)

Claim Rejections - 35 USC § 103

Claims 1, 2, 4, 6-11, 14-24, 25, 27-32, 35, 36, 40, 55-58, 65-72, and 74-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrington et al., U.S. Patent No. 6,161,099.

As per claims 1, 2, 4, 6-11, 14-25, 27-32, 35, 36, 40, 55-58, 65-72, and 74-78 Harrington et al. teach an auction system comprising:

- entering an order for a product (e.g. financial instruments whose value changes with market conditions- bonds, stocks, paper...etc.), the order specifying a quantity of the product, price and an exposure time for which the order can be displayed for responses (figures 5, 12 and 15; column 6,

lines 10-36; column/line 7/65-8/18; column 10, lines 22-41; column 13, lines 53-56)

- entering a response to an order, the response specifying a relative price with a price improvement (figures 6, 10 and 13; column 9, lines 11-65; column 10, lines 12-31)
- receiving a response (with price and quantity) and match the order with the response (figure 6)
- matching the order with the response in accordance with the exposure time specified by the order (figure 6; column 8, lines 18-28; column 9, lines 11-22; column 10, lines 32-41; column 11, lines 20-42; column 12, lines 24-30)
- entering pre-defined relative indications (e.g. quantity) that correspond to a willingness to respond to orders to buy or sell the product if an order for the product arrives, wherein the pre-defined indications specify a price relative to an indicator of the current prevailing market price (figure 6)
- retrieving an oldest response, other order, or pre-defined relative indication and determining whether the oldest response, other order, or pre-defined relative indication satisfies the order (figure 6)
- executing a trade between the first order and one of the other orders or responses that matched the first order (figure 6; column 12, lines 24-30)
- conditions attached to an order (figure 15)

- all or nothing bids (column 4, lines 38-42)
- workstations where pre-defined relative indications can exist in the system before (column 14, lines 10-13) or after (figure 10; column 9, lines 13-39) an auction for a product

Claims 2 and 77 recite an exposure time of less than 30 seconds.

Harrington et al. teach exposure time (figure 15). Hence the window for bid submission would be merely a matter of design choice. Further, Harrington et al. disclose dutch, single bid and no competition auctions (figure 15; column 1, lines 35-50) hence in these instances where a seller expects rapid responses, it would have been obvious to have shorter exposure times.

Claim 24, 57, 69 and 78 recite matching an order with a response during the exposure time at the price of the response, where the price of the response varies according to a "best bid" (e.g. national best bid/offer) or generally accepted indicator. This is taught by the Harrington et al. reference (figure 6; column 9, lines 11-22). Specifically, the bond seller may restrict the system to only allow better bids, hence bids subsequent to the submission of the best bid most result in a price improvement in order to be valid (figure 15; column 9, lines 23-54; column 10, lines 13-22). Hence, the price varies according to a best bid.

Harrington et al. also teach that bidders are sensitive to outside prices and use this information to determine a response (column 3, lines 13-22). Similarly, teach orders that have unrevealed conditions, such as required price improvements

(figures 5, 6, 11, and 15). To one of ordinary skill it would have been obvious to base this improvement on any data (column 3, lines 13-22), the bond seller believes will bring the best price.

The Applicant has amended claims 1, 14, 64, and 72, to include the limitation of matching the order with a first response that meets all the conditions specified by the order and terminating the auction once a response has been matched with an order. While claims 7, 40, and 71 recite response data being "undisclosed to participants in the market until and unless matched with an order" (column 1, lines 35-50). Harrington et al. disclose sealed-bid and silent and blind auctions where current highest bid and identity are unknown, and not revealed until the close of the auction. Harrington et al. also disclose a "Dutch flower auction" where the first buyer to accept an offer wins the product up for auction (column 1, lines 35-50). Therefore, it would have been obvious to one of ordinary skill to apply features of the Harrington et al. system to prior art auction types such as dutch or sealed auctions in order to allow users to participate in the auction process without requiring their (i.e. users) physical presence (column 1, lines 50-58).

As per claims 6, 9, 14, 16-23, 27, 30, 35, 57, 65, and 76, Harrington et al. teach an auction system with specific auction start times and end times, price improvement conditions, entering pre-defined conditions before or after an order is entered, determining whether a match price falls outside of a spread specified

by the order (figures 6,12, and 15; column 10, lines 22-31). In particular, Harrington et al. teach orders that specify a minimal acceptable price improvement (figure 15), executing a trade between an order (e.g. first order) (column 12, lines 7-30). Therefore, it would have been at least obvious to one of ordinary skill to expire the auction process at the end time. Harrington et al. apply their system to the sale of financial products. And while the Harrington et al. system is dedicated to initial offerings, financial markets are old and well known, hence it would have been obvious to one of ordinary skill to use a market maker, specialist and/or brokerage to sell shares, bonds and/or derivatives. Similarly, as Harrington et al. teach best bids (figure 6), it would have been obvious to define a "best bid" as a national best bid. Clearing corporations and their functions are old and well known, therefore it would have been obvious to one of ordinary skill to refer a completed transaction to a clearing corporations in order to validate the transaction.

Claims 3, 5, 12, 13, 26 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrington et al., U.S. Patent No. 6,161,099 in view of Silverman et al., U.S. Patent No. 5,136,501.

As per claims 3, 5, 12, 13, 26, and 73, Harrington et al. teach an auction system receiving bids during an exposure time, matching bids with an order, identifying the best bid and silent or secret auctions (figures 6 and 15; column 1, lines 36-50). However, Harrington et al. do not explicitly recite a method for

determining a best bid. Silverman et al. teach an anonymous matching system that matches bids with orders based on quantity, price and time (e.g. order, oldest response) (figures 13-18; column 4, lines 6-26; column 6, lines 55-68; column 16, lines 36-46; column 17, lines 18-45; column/line 18/35-19/31).

Therefore, it would have been obvious to combine the teachings of Harrington et al. and Silverman et al. in order to increase system efficiency.

(11) Response to Argument

The Appellant's failure to challenge the following assertions of facts has resulted in the following to be acknowledged as admitted prior art:

- Financial markets, clearing corporations and their functions

Group I

The Appellant is of the opinion that Harrington et al. do not teach "entering orders". The Examiner respectfully disagrees. The Examiner offered the Appellant the opportunity to define the term order (papers no. 27, 28 and 30) in order to perhaps circumvent the prior art of Harrington. The Appellant declined (paper No. 28). In order to define an "order", the Examiner relied on the ordinary meaning of the claim term (*Tex. Digital Sys. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 [64 USPQ2d 1812]). Further, when determining the claim term's ordinary meaning the Examiner viewed in the term in

context (*Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, No. 02-1145, slip op. at 9 (Fed. Cir. June 27, 2003)). Hence the Appellant's remarks of the claim capable of being a "buy" or "sell" order (Appeal Brief, page 15, lines 1-3) is moot and merely serves as evidence of the Appellant attempting to read limitations from the specification into the claims (*In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)). Therefore, given the Dictionary definition of the term "order" (The American Heritage Dictionary Second College Edition defines an order as a "commission or instruction to buy, sell or supply something") therefore the auction defining process of Harrington et al. ('099, figure 15) clearly reads (as opposed to an inherent teaching) on "entering an order" as it is a commission or instruction to "sell or supply something" (i.e. financial products). This is evidenced by the responses to "buy" the financial product ('099, column 6, lines 10-65). This interpretation is in line with the Applicant's system as an order is entered using order type, quantity, financial product and exposure time (Specification, page 9, lines 16-18) all parameters used by an auctioneer, issuer, auction administrator...etc. when preparing a financial product for sale ('009, figures 10 and 15; page 6, lines 10-52). The Appellant attempts to mischaracterize the teaching by framing the "buy and sell" relationship as between two issuers (Appeal Brief, page/line 15/1-16/7). The Appellant then relies on this narrow and construed interpretation to refute the teachings of Harrington et al. as Harrington et al. do not teach a "buy" side issuer. This is a red herring. Notice that Harrington et al. clearly teach an exposure time for which the order (i.e. the commission or instruction to sell or supply bonds) can be displayed for

Art Unit: 3621

responses (figures 6 and 15; column 10, lines 32-41; column 12, lines 24-30). In order to refute this fact, the Appellant relies on the Specification to mandate that orders are "two-sided" and that an issuer must also be able to buy bonds (Appeal Brief, page/line 15/26-16/3). The question must be asked why does the issuer have to buy bonds? Is the word "buy" found in claim 33? The Examiner did not rely on such an analysis in his rejection, nor is it a part of the Harrington et al. system. When viewed in the simple, and plain context of the Dictionary definition, where the auctioneer, issuer is the seller and the bidders are the buyers ('099, column 6, lines 36-52), the anticipation of the Appellant's system by Harrington et al. is clear.

Group II

Although, the Appellant again attempts to read in limitations from the Specification by inferring that claim covers products being bought or sold by the order (Appeal Brief, page 16, lines 26-27). Harrington et al., in light of the plain meaning of the term “order”, teach “entering an order for a product by specifying in the order an exposure time for which the order can be displayed for responses” (figure 15).

Harrington et al. also teach prospective buyers submitting bids in an attempt to acquire the bonds being supplied by the issuer or auctioneer (figures 3b, 13; column/line 10/42-11/19). The Appellant states that Harrington et al. do not teach a “generally accepted indicator of a prevailing, current market price” and a “specified price improvement”. This is incorrect. Harrington et al. teach an auctioneer limiting incoming bids accepted by the system to allow only “better bids” (figure 15; column 10, lines 20-31) (Note: an item (e.g. stocks) can be up for bid for a certain quantity and price, incoming bids may match the quantity and not the price, price and not the quantity, neither...etc.). Therefore, a “best bid” (‘099, column 9, lines 12-65) is a “generally accepted indicator of a prevailing, current market price” while an incoming and better bid embodies a specified price improvement as is required by the “better bid” limitation set by the auctioneer (figure 15; column 10, lines 20-31). Regarding “matching the order with a first one of the responses that meets the conditions specified by the order during the exposure time”, Harrington et al. disclose so-called “Dutch flower auctions” (‘099, column 1, lines 45-50) where the first to accept an order wins. The Appellant is of the opinion that to integrate the concept

Art Unit: 3621

would teach away from Harrington et al. and be beyond the abilities of one of ordinary skill. The Examiner respectfully disagrees. Note, the drawbacks of the prior art auctions as stated by Harrington et al. ('099, column 1, lines 50-58) are that they do not allow remote parties to participate in the auction process, and that they, the prior art systems, do not allow for the intricacies of an initial bond offering ('099, column/line 2/61-4/31). However, it doesn't prevent aspects of one from being integrated with another and recall an item (e.g. stocks) can be up for bid for a certain quantity and price, and incoming bids may match the quantity and not the price, price and not the quantity, neither, etc.. According to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), one of the steps in determining obviousness is to resolve the level of ordinary skill in the pertinent art. Therefore, one of ordinary skill in conducting an auction, would have knowledge of the different methods for conducting an auction (e.g. silent bids- '099, column 1, lines 22-30, NYSE, reverse auctions, bond offerings) and processes for selecting a winning bid (e.g. highest bid, first bid, largest volume...etc.) (Problem cannot be approached on the basis that workers in the art would know only what they could read in references; those skilled in radiator art must be presumed to know something about radiators apart from what references disclose- *In re Jacoby*, 135 USPQ 317 (CCPA 1962)). Hence, it would have been obvious to an auctioneer, who is one of ordinary skill in the art of auctions, looking at the system of Harrington et al. to choose a "winner" using any of the established methods. Contrary to the Appellant's assertion, the Examiner in the rejection to claim 1 has considered each limitation and pointed out how the prior art either explicitly reads on the limitation and/or suggests to one of ordinary skill to an

obvious modification. Therefore, the point about "printed matter" is moot although the Examiner stands by his analysis of claim 1 regarding non-functional data (paper No. 30, Response to Arguments).

Group III

Appellant's claim 1 is directed to the broad class of methods of auctioning products. Claim 1 does not disclose a particular class of products. In re Jacoby states-

Problem cannot be approached on the basis that workers in the art would know only what they could read in references; those skilled in radiator art must be **presumed to know something** about radiators **apart from what references disclose**- *In re Jacoby*, 135 USPQ 317 (CCPA 1962)

Similarly, a reference is to be considered not for what it expressly states, but for what it would reasonably have suggested to one of ordinary skill of the art (*In re Delisle*, 160USPQ 806 (CCPA 1969)) and in considering a disclosure of a reference patent, it is pertinent to point out not only specific teachings of patent but also the **reasonable inferences** which one skilled in the art would logically draw therefrom (*In re Shepard*, 138 USPQ 148 (CCPA 1963)). Harrington et al. explicitly recite auction start and end times ('099, figures 6 and 15; column 10, lines 32-41; column 12, lines 24-30). To one of ordinary skill, the window for bid submission would be merely a matter of design choice, i.e. to include boxes for seconds. Further, Harrington et al. disclose dutch, single bid and no competition auctions (figure 15; column 1, lines 35-50) hence in these instances where a seller expects rapid responses, it would have been obvious to have shorter

exposure times. Harrington et al. do not place any limitations or constraints on the length of time for conducting an auction, therefore for the Appellant to suggest otherwise is teaching away from the Harrington et al. system. Hence, to one of ordinary skill in the broad class of general auctioning of a product, it would have been obvious to set the start and end time in accordance with the desires of the auctioneer.

Group IV

The Examiner did not ignore any limitations. Again, Harrington et al. teach a user submitting bids in response to an order for supplying a product (figures 1-3b and 10-15), where an order is defined as a "commission or instruction to buy, sell or supply something". Harrington et al. also teach an auctioneer limiting incoming bids accepted by the system to allow only "better bids" where bid quality is determined by price (figure 15; column 10, lines 20-31) (Note: an item (e.g. stocks) can be up for bid for a certain quantity and price, incoming bids may match the quantity and not the price, price and not the quantity, neither...etc.). Therefore, a "best bid" ('099, column 9, lines 12-65) is a "generally accepted indicator of a prevailing, current market price" while an incoming and better bid embodies a specified price improvement, or change in price as is required by the "better bid" limitation set by the auctioneer (figures 12 and 15; column 10, lines 20-31).

Group V

Harrington et al. teach a user submitting bids in response to an order for supplying a product, where an order is defined as an (figures 1-3b and 10-15) "commission or instruction to buy, sell or supply something". A "bid" is a "pre-defined relative indication that correspond to a willingness to buy or sell the product". A "bid" is "pre-defined" as both supplying and bidding parties understand their responsibilities once a bid is accepted (i.e. the winning bidder obtains the product at the cost of the winning bid and the supplier provides the product). A "bid" is relative indication as each bid is constructed relative to the product to up for bid and competing bids. A "bid" also reflects a "willingness to buy", as it expresses a bidders desire to obtain a product(s) or service(s). Harrington et al. also teach a "current price" such as the "best bid". A "best bid" is a "prevailing current market price" as if a better bid is not forthcoming it represents the value, cost and/or market price of the product- the price at which a bidder obtained the product. The Appellant attempts to more narrowly define or further explain the terms of claim 7 by incorporating limitations from the Specification. The Appellant states that the "best bid" of Harrington et al. is not a prevailing current market price because, "it is not executed until the auction is over". However, according to claim 7 and claim 1 from which it depends, a current prevailing market price is merely a benchmark or a standard by which a "pre-defined relative indication is compared". Claims 1 and 7 are silent regarding its executability, therefore the Appellant's remarks about the deficiencies of the "best bid" of Harrington et al. are moot. According to

Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), one of the steps in determining obviousness is to resolve the level of ordinary skill in the pertinent art. Therefore, one of ordinary skill in conducting **an auction**, would have knowledge of the different methods for conducting an auction (e.g. silent bids- '099, column 1, lines 22-30, NYSE, reverse auctions, bond offerings) and processes for selecting a winning bid (e.g. highest bid, first bid, largest volume...etc.) (Problem cannot be approached on the basis that workers in the art would know only what they could read in references; those skilled in radiator art must be **presumed to know something** about radiators **apart from what references disclose**- *In re Jacoby*, 135 USPQ 317 (CCPA 1962)). Hence, it would have been obvious to an auctioneer, to conduct an auction using silent, secret or sealed bids ('099, column 1, lines 35-51).

Group VI

Harrington et al. teach a user submitting bids in response to an order for supplying a product (figures 1-3b and 10-15), where an order is defined as an "commission or instruction to buy, sell or supply something". Hence, Harrington et al. teach orders and matching responses with matching responses or contra-side orders (i.e. bids). A "bid" is a contra-side order as it is an order (an instruction to buy) on the opposite side of the an order to supply or sell something.

Group VII

The Appellant introduces the new concept of “dormant” when discussing a “predefined relative indication”. The Appellant is reading in limitations from the Specification by stating that the “pre-defined relative indication” “remains dormant”, “allows trading interest to remain dormant” and “remains dormant and unseen by other participants, but when activated, becomes a response that is priced relative to a standard reference quote, e.g. the National Best Bid/Offer” (*In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)). The Examiner does not find any references to such attributes in claims 65-70 and certainly not in representative claim 40; hence the so-called “predefined relative indication” of the Appellant's Group VII is not the “predefined relative indication” of the claims and the Examiner can only address what is claimed.

Harrington et al. teach a “pre-defined relative indication” as Harrington et al. teach “bids”. A “bid” is “pre-defined” as both supplying and bidding parties understand their responsibilities once a bid is accepted (i.e. the winning bidder obtains the product at the cost of the winning bid and the supplier provides the product). A “bid” is also a “relative indication” as each bid is constructed relative to the product to up for bid and competing bids. Regarding NBBO, claim 69 only recites a plain old “national best bid/offer” which to one of ordinary skill is merely a “best bid”.

Group VIII

Harrington et al. teach a user submitting bids in response to an order for supplying a product (figures 1-3b and 10-15), where an order is defined as a “commission or instruction to buy, sell or supply something”. Harrington et al. also teach an auctioneer limiting incoming bids accepted by the system to allow only “better bids” where bid quality is determined by price (figure 15; column 10, lines 20-31) (Note: an item (e.g. stocks) can be up for bid for a certain quantity and price, incoming bids may match the quantity and not the price, price and not the quantity, neither...etc.). Therefore, Harrington et al. teach an “order specifying a condition that seeks a specific minimum relative price improvement”. This is necessarily so as the system provides a bidder with a message informing a bidder why her/his/their bid did not meet requirements such as a minimum price ('099, figures 12 and 15).

Group IX

Harrington et al. teach a user submitting bids in response to an order for supplying a product, where an order is defined as an (figures 1-3b and 10-15) “commission or instruction to buy, sell or supply something”. A “bid” is a “pre-defined relative indication that correspond to a willingness to buy or sell the product”. A “bid” is “pre-defined” as both supplying and bidding parties understand their responsibilities once a bid is accepted (i.e. the winning bidder obtains the product at the cost of the winning bid and the supplier provides the product). A “bid” is relative indication as each

bid is constructed relative to the product to up for bid and competing bids. A “bid” also reflects a “willingness to buy”, as it expresses a bidders desire to obtain a product(s) or service(s). Harrington et al. also teach a “current price” such as the “best bid”. A “best bid” is a “prevailing current market price” as if a better bid is not forthcoming it represents the value, cost and/or market price of the product- the price at which a bidder obtained the product. Therefore, Harrington et al. teach “pre-defined relative indications that specify a price relative to a current market price”.

Group X

Harrington et al. explicitly recite auction start and end times ('099, figures 6 and 15; column 10, lines 32-41; column 12, lines 24-30). Harrington et al. also teach an auctioneer limiting incoming bids accepted by the system to allow only “better bids” where bid quality is determined by price (figure 15; column 10, lines 20-31) (Note: an item (e.g. stocks) can be up for bid for a certain quantity and price, incoming bids may match the quantity and not the price, price and not the quantity, neither...etc.).

Therefore, a “best bid” ('099, column 9, lines 12-65) is a “generally accepted indicator of a prevailing, current market price” while an incoming and better bid embodies a specified price improvement, or change in price as is required by the “better bid” limitation set by the auctioneer (figures 12 and 15; column 10, lines 20-31). Therefore, Harrington et al. also teach “exposure times” and “specific minimum relative price improvement”.


Conclusion

Appellant's arguments are not persuasive. The prior art system clearly read on the Appellant's system as it is claimed. The Appellant consistently and purposely prefers claim "breadth" to clarity and specificity. Recall, the Examiner provided the Appellant with an opportunity to define "order". To the contrary, the Appellant uses decorative and overly descriptive language, terms such as "prevailing current market price" and "pre-defined relative indication", to describe well-known processes such as bidding, and prefers to read limitations from the Specification instead of positively reciting features (i.e. orders that remain dormant). Further, the Appellant does not give fair credit to the knowledge and capabilities of one of ordinary skill and what would have been anticipated and rendered obvious in light of the clear teachings of the prior art.

For the above reasons, it is believed that the rejections should be sustained.

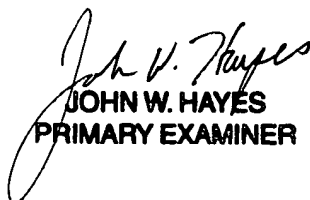
Art Unit: 3621

Respectfully submitted,

Calvin Loyd Hewitt II 
November 21, 2003

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